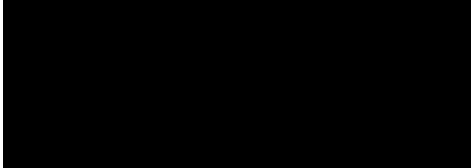


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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

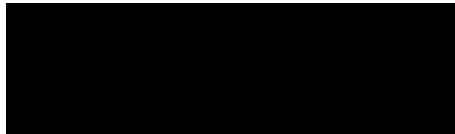


U.S. Citizenship
and Immigration
Services



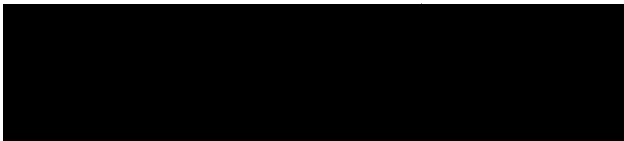
FILE: SRC 02 273 53433 Office: TEXAS SERVICE CENTER Date: APR 05 2004

IN RE: Petitioner:
Beneficiary:



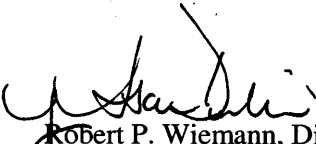
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for treatment as a motion.

The petitioner is a hotel/motel that seeks to employ the beneficiary as a marketing manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

Neither counsel nor the petitioner appealed the director's decision. Instead, counsel timely filed a motion to reopen and reconsider, which was received by the director on November 25, 2002, 25 days after the denial of the petition on October 30, 2002.

The AAO has jurisdiction to consider an appeal that is filed pursuant to the denial of a petition. 8 C.F.R. § 103.3. The appropriate form to be used for an appeal in this type of petition is the Notice of Appeal (Form I-290B). Instead of filing a Form I-290B, however, counsel filed a motion to reopen and reconsider, pursuant to 8 C.F.R. § 103.5. As no Form I-290B has been filed, the AAO does not have jurisdiction to consider the motion to reopen and reconsider.

Accordingly, the record shall be remanded to the director to consider counsel's evidence on motion. The director will determine whether the petitioner has met the eligibility requirements under section 101(a)(15)(H) of the Act, and may request any additional evidence deemed necessary to assist her with her determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The petition is remanded to the director to consider the motion to reopen and reconsider.